IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

CRL.A.No. 350 of 2001()

C.C. 341/1997 OF JUDICIAL IST CLASS MAGISTRATE II, ALUVA.

PETITIONER/ COMPLAINANT

WIPRO LTD., CONSUMER PRODUCTS DIVISION,
362/2 N.H.ROAD,CHANGAAMPUZHA NAGAR PO.
KALAMASSERY, ERNAKULAM REP.BY ITS
ACCOUNTS OFFICER, K.V.P.DAMODHARAN.

BY ADV. SRI.M.AJAY

RESPONDENTS: ACCUSED/ STATE
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1. **K.SURESH KUMAR, PROPRIETOR,**
V.S.ENTERPRISES VALIYAKULAM
VARANAD P.O., CHERTHALA, ALAPPUZHA DISTRICT.

2. **THE STATE OF KERALA, REP.BY ITS**
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/07/2007,ALONG WITH CRA.347/10, 349/01 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.350 of 2001

Dated this the 25th day of July, 2007

JUDGMENT

The appellant is the complainant company in C.C.No.341/97 with respect to the offence under Section 138 of the Negotiable Instruments Act which stands dismissed and the accused acquitted.

2. The case of the complainant is that the impugned cheque for a sum of Rs.1,02,728.59 issued by the respondent/ accused towards the discharge of the value of the goods purchased got dishonoured for want of funds in the account of the accused. The lawyer notice sent was not replied to nor was the amount paid.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2 and Exts. P1 to P7. The defence examined DWs' 1 and 2 and got marked Ext. D1 to D6.

4. The contentions raised on facts were found against the accused and the court held that Ext. P2 cheque was issued to the complainant towards the discharge of liability and that the

statutory formalities contemplated by the Negotiable Instruments Act has been complied with. The accused was acquitted on the solitary ground that PW1 who represented the company at the time of trial was not properly authorised in this behalf.

5. Although notice was served on the respondent there is no appearance.

6. It is the finding of the court below that PW1 who represented the complainant subsequent to the filing of the complaint by another power of attorney holder cannot be treated as competent to represent the company as the document of authority authorising executant of the power of attorney i.e., the General Manager (Finance) has not been produced before the court below. It is submitted that PW1 is one of the executives of the company and it is the same General Manager (Finance) who had executed the earlier power of attorney to one Mr.Kannan who had filed the complaint and it was in the case of the contingency of the earlier power of attorney holder leaving the company that Ext. P1 authorisation in favour of PW1 has been executed. The application to substitute the earlier power of attorney holder by PW1 was allowed after notice to the respondent on 5.1.1999. The

counsel for the revision petitioner has relied on the decision reported in this regard in **Atul Mathur vs. Atul Kalra (1989 (4) SCC 514**). The similar contention as herein was rejected by the apex court. So also in **Associated Cement Co. Ltd. vs. Keshavanand (1998(1) SCC 687** the Supreme Court has made it clear that it would not be possible for a company to be represented by a person for ever as the particular person may subsequently ceased to be associated with the affairs of the company and hence, it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. The decision of this court in **Mulammoottil Consumer Credit Ltd. vs. Sreenivasan (2006(4)KLT 543)** on the above point has also relied on the above cited decision. The counsel for the appellant has also brought to the notice of this court that Section 54 of the Companies Act specifically lays down that a document or proceedings required authentication by a company may be signed by a Director, Manager, Secretary or other authorised officer of the company and it need not be under its common seal. I find that in view of the above position of law the finding of the court

below that PW1 cannot be treated as an authorised representative of the company is liable to be set aside; and I do so.

7. In the circumstances, the accused/respondent is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.1,15,000/- and in default, to undergo simple imprisonment for three months. He shall appear before the court below on 24.8.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl

K.R.UDAYABHANU, J

Crl.A.No.1193/2001

JUDGMENT

28th June 2007